# FINAL REPORT

ON

# Laws Relating to the Liability of Employers

To Make Compensation to their Employees for Injuries received in the course of their employment which are in force in other countries.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O.,
COMMISSIONER.

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# Final Report

ON

LAWS RELATING TO THE LIABILITY OF EMPLOYERS TO MAKE COMPENSATION TO THEIR EMPLOYEES FOR INJURIES RECEIVED IN THE COURSE OF THEIR EMPLOYMENT WHICH ARE IN FORCE IN OTHER COUNTRIES, AND AS TO HOW FAR SUCH LAWS ARE FOUND TO WORK SATISFACTORILY.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O., Commissioner

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*To His Honour* SIR JOHN MORISON GIBSON, K.C.M.G., K.C., LL.D., *Lieutenant-Governor of the Province of Ontario.*

MAY IT PLEASE YOUR HONOUR:

I have the honour to report that I have concluded the enquiries which I was by Your Honour's Commission bearing date the 30th day of June, 1910, appointed to make "as to the laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily," and on the first day of April, 1913, I submitted to Your Honour a draft bill embodying such changes in the law as in my opinion should be adopted in this Province, and I now proceed to state my reasons for recommending that the draft bill should be passed into law.

At the outset of the enquiry it was contended by those who spoke on behalf of the workingmen: (1) That the law of Ontario is entirely inadequate in the conditions under which industries are now carried on to provide just compensation for those employed in them who meet with injuries, or suffer from industrial diseases contracted in the course of their employment; and (2) that under a just law the risks arising from these causes should be regarded as risks of the industries and that compensation for them should be paid by the industries.

With these two propositions those representing the employers expressed their agreement, though it is fair to say that it was probably not intended to agree that compensation should be paid in respect of industrial diseases.

Agreeing as I did with the contention of the workingmen there remained only to be considered in what form and by what means the compensation should be provided.

For the purpose of reaching a conclusion as to this, and in obedience to the directions of the Commission, I made enquiry as to the laws in force in the principal European countries, in the United States of America and in the Provinces of Canada. I also visited Belgium, England, France, and Germany, and consulted those concerned in administering the laws of those four countries, and others

qualified to judge as to whether they have been found to work satisfactorily. Much evidence has been taken bearing upon the general question, all of which appears in the appendix to my first interim report, dated the 27th day of March, 1912, and the appendix to this report.

Before referring to the different systems in operation it may be proper to say that most of these laws, and perhaps all of them except the German, have not been in force long enough to enable a conclusive opinion to be formed as to their merits or demerits.

There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, the industries being divided into groups, and the employers in the industries in each group being collectively liable for the payment of the compensation to the workmen employed in those industries—practically a system of compulsory mutual insurance under the management of the State. The laws of other countries are of one or other of these types, or modified forms of them, and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it.

Those representing the workingmen at the beginning of the enquiry appeared to favour the adoption of the British system. Mr. F. W. Wegenast, who represented the Canadian Manufacturers Association, strongly urged the adoption of the German system, and his view was supported by most of the other employers who appeared or were represented before me, and later on in the enquiry the representatives of the workingmen fell in with Mr. Wegenast's views.

There were, however, differences of opinion as to details. The employers insisted that a part of the assessments to provide for the payment of the compensation should be paid by the employees, and this was vigorously opposed by the representatives of the workingmen. The employers desired that no compensation should be payable where the injury to the workman did not disable him from earning full wages for at least seven days, and to this the representatives of the workingmen objected. The employers also desired that, as the British act provides, an employee should not be entitled to compensation if his injury was due to his own serious and wilful misconduct, but the representatives of the workingmen objected to any such limitation of the right to compensation.

As stated in my first interim report, I had then come to no conclusion as to these matters, or as to what system of compensation I should recommend for adoption, nor had I reached a conclusion as to the industries to which the law should be made applicable, nor as to certain other details which I enumerated in my report.

After the best consideration I was able to give to the important matters as to which I was commissioned by Your Honour to make recommendations, I came to the conclusion, to which I still adhere, that a compensation law framed on the main lines of the German law with the modifications I have embodied in my draft bill is better suited to the circumstances and conditions of this Province than the British compensation law, or the compensation law of any other country.

I have had the benefit of hearing the opinions of Mr. Miles M. Dawson, Mr. S. H. Wolfe, Mr. P. Tecumseh Sherman, and Mr. F. W. Wegenast, all of whom have given special attention to the subject of compensation laws and industrial accident insurance, as to the operation of those laws, and as to the best form of compensation law to be adopted under the conditions which obtain in this Province,

and also of hearing the opinions of Mr. James Harrington Boyd, who had a large part in framing the compensation law passed by the Legislature of the State of Ohio, and of Mr. F. W. Hinsdale, the chief auditor of the Industrial Insurance Board of the State of Washington, as to the operation of the compensation laws of those States, and also upon the general question as to the best form of compensation law for this Province.

These gentlemen differed widely in their opinions as to the best form of compensation law, as will be seen from their testimony and arguments which appear in the appendices to my report, and from the memoranda submitted by Mr. Wolfe and Mr. Sherman, although they are practically unanimous as to the industries bearing the burden of the compensation, and, with the exception of Mr. Wegenast, they are all of opinion that this burden should be borne equally by the employer and employed.

Mr. Sherman is opposed to the system of collective liability, which he characterizes as unjust because it imposes upon the individual employer the obligation of sharing the burden of accidents in other establishments than his own and, as he assumes, notwithstanding that by the introduction of the best machinery and appliances and safeguarding against accident he has reduced the number of accidents in his establishment to a minimum, he is placed as respects his liability to pay compensation on the same footing as an employer whose machinery and appliances are defective and who takes little or no precaution to guard against accidents in his establishment.

If a uniform rate were payable by all the employers in a class or sub-class, regardless of these considerations, I agree that there would be the injustice which Mr. Sherman points out, but I have in the draft bill which I have submitted introduced provisions (sec. 71, s.s. 2 and 4) which, in my opinion, will provide against that happening.

The arguments presented by Mr. Dawson and Mr. Wegenast, and perhaps those of Mr. Wolfe, in favour of the collective system are, I think, unanswerable if, as I believe, the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.

It is in my opinion essential that as far as is practicable there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled, and it is also important that the small employer should not be ruined by having to pay compensation, it might be, for the death or permanent disability of his workmen caused by no fault of his. It is, I think, a serious objection to the British act that there is no security afforded to the workman and his dependants that the deferred payments of the compensation will be met, and that objection would be still more serious in a comparatively new country such as this, where many of the industries are small and conditions are much less stable than they are in the British Isles.

This objection could, of course, be met by making it obligatory upon the employer to insure his workmen against accident to the maximum amount to which they or their dependants would be entitled under the act, but if insurance is to be compulsory I see no reason why the cheapest form of it—mutual insurance—should not be prescribed.

I agree also with Mr. Dawson that the ultimate burden of paying the compensation under such a law as is proposed falls upon the community and that

whatever the employer has to pay, whether directly by way of compensation, or if he insures against his liability by paying insurance premiums, forms part of the cost of that which he produces and is added to the selling price.

Mr. Sherman's view is that insurance should be made compulsory "only if and when reasonably necessary in order to assure to the injured workmen the payment of their compensation," and that "in no event should those concerns that are amply able to carry their own insurance be required to buy insurance or contribute to a State scheme, for that," he says, "would be pure economic waste."

I do not understand the latter argument or how there can be said to be economic waste if the "concerns" he mentions are not required to do more than contribute with other employers to the payment of compensation according to the hazard of their respective businesses. I could understand that there might be economic waste if it were incumbent on such an employer to insure with a joint stock company which would require him to pay a premium sufficient to provide for the cost of securing the business and a reasonable dividend to its shareholders as well as to indemnify against the risk undertaken.

There was much discussion as to the basis on which the assessments to provide the compensation should be made. The German law provides for assessing only for the amounts required to meet the payments of compensation which fall due during the year next preceding that in which the assessments are made, with an added percentage to provide a reserve fund to meet deficiencies in the accident fund in the event of an unusual catastrophe or a depression in trade, but no assessment is made beyond that to meet the deferred payments of compensation, i.e., the payments which are to become due in future years. This plan, popularly called the current cost plan, is that proposed by the Canadian Manufacturers Association, and Mr. Dawson favours it as not only expedient because it does not involve making the heavy assessments which would have to be made at the outset if the capitalized value of the deferred payments had to be provided for by the assessments, but also as "not unfair to the employers in future years, or economically unsound."

On the other hand the current cost plan is vigorously denounced by Mr. Sherman, who contends that it is manifestly unfair to the employer of the future because it shifts upon his shoulders part of the burden of compensating for accidents which have happened before he became an employer, and that it results in low assessments in the early years of the operation of the law, and necessarily increases in the later years, until in a measurable period of time they become a burden too oppressive for the employer of the future to bear.

In support of his view Mr. Sherman referred to the rates in Germany, which he said, "now average about double what they were at the beginning," and he added that "it is calculated that they will not reach their stable maximum for some twenty years more. How much more they will then be no one knows, but the majority guess is they will then double."

Mr. Wolfe, is equally emphatic in his condemnation of the current cost plan, and in addition to his oral testimony presented a table which appears on page 147 of the appendix to this report, and which he contended demonstrates the accuracy of his conclusions.

The views of Mr. Sherman and Mr. Wolfe were controverted by Mr. Wegenast, who contended that statistics prove that in some instances the stable maximum has already been reached and that there is nothing to justify the gloomy forebodings of Mr. Sherman as to the future.

Mr. Wegenast's contention is hardly supported by Mr. Dawson, whose opinion (page 452, appendix to first interim report) is that there will be an increasing rate "which is estimated to increase pretty rapidly for about ten years and then rather slowly and with increasing slowness for at least fifteen years longer, and if there is no improvement in the conditions relating to trade and industry, it will still very slowly increase for twenty-five years beyond that."

I am not convinced that the German plan affords an adequate safeguard against the dangers which Mr. Sherman anticipates, nor am I satisfied that it does not do so. I have, therefore, concluded that the act should not lay down any hard and fast rule as to the amount which shall be raised to provide a reserve fund and that it is better to leave that to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate. I have therefore made provision in the draft bill to that end, by making it "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened," (sec. 70), and by authorizing the Lieutenant-Governor in Council if in his opinion the Board has not performed that duty to require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, (sec. 90), and these provisions I deem essential to the safety and adequacy of the scheme of compensation for which the draft bill provides.

I may here point out that the act of the State of Washington upon which the draft bill submitted by the Canadian Manufacturers Association, to which I shall afterwards refer, is modeled, requires that for every case of injury resulting in death or permanent total disability there shall be set apart out of the accident fund the estimated present value of the monthly payments to which the workman or his dependants are entitled, the total in no case to exceed $4,000.

Mr. Sherman also takes strong grounds against the administration of the act being committed to a Board appointed by the State, his view being that such a Board will be influenced by partisan political considerations in practically all its doings. I have no such fear. Whatever else may be doubtful as to the workings of the act there is no doubt, I think, that the members of the Board appointed by the Crown will impartially and according to the best of their ability discharge the important duties which will devolve upon them in the event of the draft bill becoming law. Whatever may be the experience of other countries the experience of Canada does not justify the view which Mr. Sherman entertains. There are now two Provincial Commissions appointed by the Crown discharging very important duties—the Ontario Railway and Municipal Board and the Hydro-Electric Power Commission—and one appointed by the Governor-General also discharging very important duties—the Railway Commission of Canada. Whatever criticisms there may have been of the action of these Boards, no one, as far as I have heard, has ever charged or even suggested that any member of them has been actuated or influenced by partisan political considerations in any action that has been taken by him and I know of no reason why the Board which is provided for by the draft bill may not be expected to be as free from political partisanship as either of the Boards I have mentioned.

I proceed now to state the general plan upon which the bill has been drafted. The bill is divided into Parts. In Part I the liability of employers to contribute to the accident fund or to pay the compensation individually is dealt with.

The bill does not provide for making all employers liable to pay compensation, but only those in the industries enumerated in schedules 1 and 2, and provision is made for industries enumerated in schedule 2 being added to schedule 1 whenever the Board deems it expedient to add them. Schedule 1 includes all the industries which it is proposed by the draft bill of the Canadian Manufacturers Association to bring within the scope of the act, except those enumerated in schedule 2.

The inclusion of railways in schedule 1 was opposed by the three principal steam railway companies and by some of the other railway companies, and I saw no reason why their wishes should not be met if by meeting them the act would not be rendered less beneficial to the employees and no injustice would be done to the employers in the industries included in the schedule. The draft bill has been framed so as, in my opinion, to work no injustice to anyone and not less beneficially to the employees owing to railways being excluded from the schedule.

The only difference between the operation of the act as to industries in schedule 1 and those in schedule 2 is that employers in the former contribute to the accident fund and in that way pay collectively the compensation, while employers in the latter do not contribute to the accident fund but are liable individually for the compensation payable to their employees. In other respects the operation of the act is the same in both cases. The Board determines the amount of the compensation in both cases and its orders when filed in a County or District Court become orders of the court and may be enforced as judgments of it.

The reasons for adopting the collective system have practically no application to railways, especially when, as has already been done in Ontario and will, I do not doubt, be done when the Parliament of Canada meets, provision is made that all sums payable for compensation shall form part of the working expenditure of the railway company, which is a first charge upon its revenues.

It is manifest, I think, that schedule 1 should not include industries of Municipal Corporations or Commissions, Public Utilities Commissions, Trustees of Police Villages and School Boards, and they have therefore been included in schedule 2.

Schedule 2 also includes the industries of telephone companies and navigation companies. These industries, like those of railway companies, are exceptional in their character, and the reasons for adopting the collective system have no application to them.

In order that additional security may be afforded that the compensation to which employees in the industries in schedule 2 and their dependants may become entitled will be paid, provisions are embodied in the draft bill enabling the Board to require an employer in any industry included in the schedule to commute the weekly or other periodical payments of compensation, (secs. 27 and 28), and also to insure his workmen and keep them insured against accidents in a company approved of by the Board for such sum as the Board may direct.

If it had been practicable to do so without impairing the efficiency of the collective system I should have preferred to include a larger number of industries in schedule 2 in order that with the two systems working side by side experience might demonstrate whether the collective system or that of individual liability was preferable, but I have not been able to satisfy myself that the exclusion from schedule 1 of any considerable number of the industries included in it would not impair the efficiency of the collective system, and I have therefore excluded from

it only the industries enumerated in schedule 2. Although but a small number of industries are included in that schedule the operation of the two systems will afford some evidence as to which is the better.

Another reason why it is not expedient to bring these omitted industries within the scope of the act is that by doing so the initial work of the Board would be very greatly augmented and the risk would be run that it would be so overburdened as practically to paralyze its operations. It is, in my opinion, much better that if these industries are to be brought in that should be done later on.

As what I have said has indicated, I have not thought it advisable at the outset to bring within the scope of Part I all employments. The principal industries excluded are the farming, wholesale and retail establishments, and domestic service. There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme, and it is probable that when the question of bringing these industries within the scope of the act has to be considered, it will be found that provisions somewhat different from those which are applicable to the industries which it is proposed now to bring within it will be necessary.

I have however made provision for bringing any of these excluded industries within the scope of Part I if and when the Board deems it proper to do so, and its regulation or order bringing them in is approved by the Lieutenant-Governor in Council.

The bill would, in my opinion, fail to do justice to a large body of employees who will not be entitled to compensation under Part I, if it did not provide for a substantial modification of the common law as to the liability of the employer to answer in damages to an employee who is injured owing to the negligence of the employer or his servants.

According to the common law it is a term of the contract of service that the servant takes upon himself the risks incidental to his employment (popularly called the assumption of risk rule), and that this risk includes that of injury at the hands of fellow-servants, (popularly called the doctrine of common employment). The doctrine of common employment is an exception to the general rule that the master is responsible for the acts of his servants when engaged in his work, and has rightly, I think, often been declared unfair and inequitable. The reasoning upon which the exception was justified in the celebrated case of Priestley v Fowler does not commend itself to me as satisfactory, and I doubt whether if the question were to arise now for the first time the same conclusion would be reached. The case was decided at a time when very different views as to the respective rights and duties of employer and employed prevailed than are entertained at the present day, and at a time not far removed from that in which there was upon the Imperial statute book a law which made it a criminal offence punishable with imprisonment for "journeymen manufacturers or others" to agree together for obtaining an advance of the wages of themselves or of any one else, or for lessening or altering their usual hours or time of working.

The unfairness of this doctrine has been recognized by the Imperial Parliament and by the Legislature of this Province in the enactment of employers' liability acts which have modified it but to a very limited extent.

In referring to the legislation of this Province my reference is to the act called the Workmen's Compensation for Injuries Act, which is erroneously so styled, for it is really an employers' liability act.

In my opinion there is no reason why this objectionable doctrine should not, as one of the provisions of Part II of the draft bill provides, be entirely abrogated.

The draft bill also provides for the abrogation of the assumption of risk rule.

The rule is based upon the assumption that the wages which a workman receives include compensation for the risks incidental to his employment which he has to run. That is, in my judgment, a fallacy resting upon the erroneous assumption that the workman is free to work or not to work as he pleases and therefore to fix the wages for which he will work, and that in fixing them he will take into account the risk of being killed or injured which is incidental to the employment in which he engages.

Another rule of the common law is unfair to the workman. Although the employer has been guilty of negligence, if the workman has been guilty of what is called contributory negligence and his injury was occasioned by their joint negligence the employer is not liable. The injustice of this rule consists in this, that though the employer may have been guilty of the grossest negligence, if the workman has been guilty of contributory negligence, however slight it may have been, and his injury was occasioned by the joint negligence, the employer is not liable.

It is proposed by the draft bill to substitute for this rule that of comparative negligence as it is called, and provide that contributory negligence shall not be a bar to recovery by the workman or his dependants but shall be taken into account in the assessment of damages.

That in making these recommendations I am not advancing any novel proposition is shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules which it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as now existing, and to the use of complicated machinery and the great and dangerous forces of steam and electricity of to-day is the generally accepted view, and was the unanimous opinion of the Employers' Liability and Workmen's Compensation Commission of the United States (Report of Commission, Vol. I, pages 1,213 and 1,214).

Having outlined the provisions of the draft bill I have submitted to Your Honour and stated my reasons for recommending their adoption I proceed to a consideration of those provisions of the draft bill submitted on behalf of the Canadian Manufacturers Association and which, I assume, embodies its views as to the form which a proper compensation law should take, which differ from those of my draft bill, omitting such of the points of difference as I have already discussed.

The compulsory provisions of the draft bill of the Association apply only to industries in which three or more persons are regularly employed, but the option is given to employers in industries in which less than three persons are employed to come under the provisions of the act. The application of the act is not so limited in my draft bill, but provision is made (sec. 73) that the Board may withdraw or exclude from a class industries in which not more than a stated number of workmen are employed, and that an employer in any industry so withdrawn or excluded may nevertheless elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged.

In my opinion it is most undesirable that there should be any such limitation of the application of the act as the Association proposes. As I have already pointed out, it is to industries in which a small number of workmen are employed that

the provisions of such an act are peculiarly applicable—as to the small employer, to prevent his being ruined as the result of an accident in his establishment, and as to his workman to insure that he will be compensated if he meets with an accident.

I am very doubtful whether it is desirable to adopt the provisions of section 73 of my draft bill. My object in introducing them was to make easier the work of the Board at the outset, and not with any idea that the power would be exercised except as a temporary expedient to lessen the work of the Board in the early stages of the administration of the act.

The proposition advanced on behalf of the Association in the early stages of my enquiry, that employees should be required to contribute to the accident fund, has apparently been abandoned, as I do not find in its draft bill any provision of that kind. I find in it, however, a provision (sec. 43) that the Board, if satisfied that in any employment the workmen are "desirous of an increase in the scale of compensation and are willing to pay the necessary increase in premiums, may by order sanction any such increased scale and may provide the method of collecting the increase in the premiums from the workmen in such employment."

In my opinion it is not desirable to complicate the act by the introduction of any such provision. It would not, I think, be taken advantage of by workmen, and it is difficult for me to understand exactly what it means. Is it intended that it shall be applicable to a single establishment or only to a class? Are the workmen to be unanimous, or can the power which the section confers be exercised if a majority of them desires an increase in the scale of compensation on the prescribed condition? If the workmen must be unanimous, the section, I have no doubt, will be a dead letter. If it is intended that a majority shall suffice, the provision is, in my judgment, highly objectionable. Sub-section 2 of the section seems to be inconsistent with sub-section 1 or incomplete, in not providing that if the employer pays the increased premium he may deduct it from the wages of the workmen.

The mode in which the assessments are to be collected proposed by the Association differs somewhat from that provided for by my draft bill. The mode which I provide for is, I think, the simpler.

I do not like the term "premium" which is used in the Association's draft bill to designate the rate at which the employer is to be assessed. I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment.

The draft bill of the Association has but one schedule of industries to all of which the act applies, and it makes no provision for abrogating or modifying the rules of the common law as to employers who are not within the scope of the act. How my draft bill differs from this will be apparent from what I have said in dealing with the general plan upon which it has been drafted.

By my draft bill (sec. 60) the Board is given exclusive jurisdiction as to all matters and questions arising under Part I, and subject to its power to rescind, alter or amend any of its decisions or orders, its action or decision is final and is not subject to appeal.

It is difficult to understand from the Association's draft bill what the jurisdiction of the Board is intended to be. Section 21 provides that the Board shall have jurisdiction to enquire into, hear and determine all matters and questions of fact and law *necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds thereof.*

This language would confer on the Board a rather limited jurisdiction and probably, judging from the provisions of section 22, less than the draftsman intended it should have. The decisions and findings of the Board upon questions of fact are made final and conclusive, but on questions of law an appeal is allowed.

In my opinion it is most undesirable that there should be the appeal for which the draft bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law.

I may point out that section 23, which allows an appeal from the decision of the Board on "questions of law," appears to be inconsistent with section 22, for in the determination of the questions enumerated in that section which are to be deemed questions of fact it may be necessary to decide questions of law, and I confess that I do not quite understand what kind of questions, if those enumerated in section 22 are eliminated, it is intended to make appealable.

In a note to section 22 it is stated that "it is submitted that it would not be wise to entirely shut out appeals and place in the hands of the Board the sole right to interpret the act . . . . and the right to define its own jurisdiction." What danger is to be apprehended from conferring these rights I do not understand, nor do I see what questions as to the construction of the act are likely to arise other than those enumerated in section 22.

In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Divisional Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court. Although I say this my judgment is against the introduction of any such provision, as it is probable that if any form of appeal to an appellate court is allowed, a defeated litigant will have the right to take his case to the Judicial Committee of His Majesty's Privy Council.

Section 10 of my draft bill, which deals with the case of sub-contractors and is applicable only to industries mentioned in schedule 2, is taken from the British Compensation Act. As the Association's draft bill does not provide for individual liability in any case, no provision corresponding to section 10 is found in it.

Sections 66, 67, and 68 of the Association's draft bill deal with the case of sub-contractors. They are, in my opinion, unnecessary and undesirable.

The draft bill of the Association is made to apply to the Crown. My draft bill is not. Apart from the question of the jurisdiction of a Provincial Legislature to affect the Crown as represented by the Dominion, it is in my opinion inexpedient that the act should apply to the Crown. It would be quite anomalous to group the Crown in respect of road-making, for instance, with other road-makers, and to make assessments upon the Crown as in the case of private persons.

I have no doubt that in case of injury to an employee of the Crown, for which if his employer were a private person he would be entitled to compensation, the Crown would make the like compensation to him and avail itself of the services of the Board for the determination of the amount and nature of the compensation.

The Association's draft bill (sec. 4) disentitles the workman and his dependants to compensation if his injury was, in the opinion of the Board, intentionally

caused by the workman, or was due wholly or principally to intoxication or serious and wilful misconduct on the part of the workman. My draft bill provides that compensation shall not be payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

The provisions of section 4 of the Association's bill are, in my opinion, objectionable. There is no need for the provision as to intentional injury as an injury purposely caused to himself by a workman is not an accident, and compensation is payable only in cases of accident and industrial diseases. In addition to this the definition of "accident" in the interpretation section of my draft bill (sec. 2) makes this abundantly clear; nor is there any reason for introducing a reference to intoxication, the provision as to serious and wilful misconduct being sufficient to cover any case in which drunkenness ought to bar the right to compensation. Section 4 applies whatever may be the result of the injury. The corresponding provision of my draft bill, following the British Compensation Act, does not apply where the injury results in death or serious disablement.

By my draft bill, following in this respect the British act, industrial diseases are put on the same footing as to the right of compensation as accidents. The Association's bill applies only to accidents. The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3 to my draft bill, but power is given to the Board by its regulations to add to the schedule. It would, in my opinion, be a blot on the act if a workman who suffers from an industrial disease contracted in the course of his employment is not to be entitled to compensation. The risk of contracting disease is inherent in the occupation he follows and he is practically powerless to guard against it. A workman may to some extent guard against accidents, and it would seem not only illogical but unreasonable to compensate him in the one case and to deny him the right to compensation in the other.

The last point of difference between the two draft bills to which I shall make any detailed reference is that as to the scale of compensation.

The scale of compensation proposed by the Association is in my opinion based upon a wrong principle and will not afford reasonable compensation to the injured workman and his dependants; and indeed I doubt whether, if it were adopted, the workingmen would upon the whole be in a much better position than they would be in without the act, especially if the changes in the common law which I recommend are made.

A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman.

To limit the period during which the compensation is to be paid regardless of the duration of the disability, as is done by the laws of some countries, is, in my opinion, not only inconsistent with the principle upon which a true compensation law is based, but unjust to the injured workman for the reason that if the disability continues beyond the prescribed period he will be left with his impaired earning power or, if he is totally disabled without any earning power at a time when his need of receiving compensation will presumably be greater than at the time he was injured, to become a burden upon his relatives or friends or upon the community.

A uniform rate of compensation which has no relation to the earning power of the workman, except as the Association's bill provides, for the purpose of reducing the rate of 50 per cent. of his wages is, in my opinion, also inconsistent with the principle upon which a just compensation law is based, and unfair, and a most undesirable mode of fixing the amount of compensation.

Not only is the scale of compensation proposed by the Association open to these objections, but the amount of the compensation is so small that only the lowest paid workman would be compensated to the extent of 50 per cent. of the loss of his earning power.

The case of an unmarried locomotive engineer earning $150 a month, not an unusual wage for the engineer of a passenger train, may be taken to illustrate the effect of the Association's proposition. All that he would be entitled to if permanent disability resulted from his injury would be $20 a month, or less than 14 per cent. of the loss of his earning power, except in the rare case of his being rendered completely helpless and requiring constant personal attendance, and in that case his compensation would be double that amount.

There are other provisions which in my judgment are still more objectionable. The limitation to $1,500 of the amount of compensation in case of permanent partial disability is, I think, unreasonable, as is manifest from the illustration just given.

The payment of lump sums is contrary to the principle upon which compensation acts are based and is calculated to defeat one of the main purposes of such laws—the prevention of the injured workman becoming a burden on his relatives or friends or on the community—and has been generally deprecated by judges in working out the provisions of the British act, and was condemned by the Association itself in the memorandum which it submitted, and which appears in the appendix to my first interim report (pp. 67-69).

The proposition that the maximum compensation in case of the loss of a major arm shall be $1,500 besides being open to the objection I have just mentioned would be most unfair in the case of a labourer, to say nothing of the skilled artisan.

A more unjust and, as it appears to me, extraordinary proposition is that contained in clause (c) of section 31, which provides that in the case of temporary disability no compensation shall be payable unless it results "in the diminution of daily earnings to the extent of at least fifty per cent"; and as far as I am aware, and as I should expect, there is no precedent for it in the legislation of any country. As far as I have been able to ascertain, the furthest that any country has gone in that direction is to provide, as do the Washington act (s. 5, clause d) and the law of Norway of July 23rd, 1894, amended by acts of December 23rd, 1899, and June 12th, 1906 (art. 4, par. 2b), that no compensation shall be payable unless the loss of earning exceeds five per cent. In my opinion there is no justification for any such exception even if it is limited as in the Washington and Norway laws.

The scale of compensation which I propose was strongly objected to by the Association as being unfair to the manufacturer, and as imposing upon him a burden that would handicap him in his competition with the manufacturers of the other Provinces and of other countries, and would tend to divert manufacturing from this Province to other Provinces in which less onerous laws are in force. It was also urged that the scale of compensation is higher than that of any other country. The last objection, if a valid one, means that there can be no progress

beyond the point which has now been reached by the country which has provided the highest scale of compensation, for if the objection is valid as to the proposed legislation it would be an equally valid objection to any increase in the compensation proposed for the country which now provides for the highest scale. The question, in my opinion, is not what other countries have done, but what does justice demand should be done. I have no fear that if the bill should become law it will handicap the manufacturers of this Province as the Association appears to think that it will, or that it will divert manufacturing from the Province. There has been in force for some years in the adjoining Province of Quebec a compensation law which imposes upon employers greater burdens than they are subjected to by the law of this Province, and yet it has not been suggested that any such results as are prophesied by the Association have followed from the enactment of the Quebec law.

In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 per cent. of his wages while his disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all that the employer will bear will be the payment of 55 per cent. of the injured workman's wages while the disability lasts.

The burden which the workman is required to bear he cannot shift upon the shoulders of any one else, but the employer may and no doubt will shift his burden upon the shoulders of the community, or if he has any difficulty in doing that will by reducing the wages of his workmen compel them to bear part of it.

It is contended that it is unfair to require the employer to pay compensation during the lifetime of the workman because in many cases it will mean that the workman will receive compensation for a period during which if he had not been injured he would have been unable to earn wages. No doubt that will be the result in some cases, but on the other hand the workman loses any advantage he would have derived had he not been injured from an increase in his wages owing to an improvement in his position, or to an increase of his earning power, or to a rise in wages from any other cause because, except in the one case of a workman who is under the age of twenty-one years when injured, the compensation is based on the wages the workman was earning at the time of his injury.

It must also be borne in mind that the workman is required, as the price of the compensation he is to receive, to surrender his right to damages under the common law, if his injury happens under circumstances entitling him by the common law to recover or, if he would be entitled to recover only under the Workmen's Compensation for Injuries Act, his right to the like damages as he would be entitled to at common law limited, however, to an amount not exceeding three years' wages or $1,500, whichever is the larger sum.

According to the testimony of Mr. Wolfe (page 141), and there is no reason to doubt the accuracy of his statement, in Germany no less than 84 per cent. of the accidents incapacitate the workmen for less than fourteen weeks.

The nineteenth report of the Minister of Labour of France shows that the number of declared accidents in that country in the year 1910, after deducting those which occasioned an incapacity of four days or less, and omitting those

which happened in mines, mining and quarries, was 412,278, and that of these 1,650, or a little more than one third of one per cent., were fatal; 5,452, or about one and one third per cent., resulted in permanent disability, and 399,769, or about 97 per cent., resulted in temporary incapacity lasting for more than four days, and that in the remaining 5,407 cases, or about one and one third per cent., the results of the accidents were unknown.

In Great Britain the duration of disability in the cases terminating in 1908 was as follows:

| | |
|---|---|
| Less than two weeks | 11.2 per cent. |
| From two to three weeks | 27.3 per cent. |
| From three to four weeks | 18.4 per cent. |
| From four to thirteen weeks | 37.7 per cent. |
| From thirteen to twenty-six weeks | 4.1 per cent. |
| Over twenty-six weeks | 1.3 per cent. |

(24th Annual Report of the United States Commissioner of Labour, Vol. II, pp. 1,525-6).

Similar statistics for Ontario are not available, but it may, I think, fairly be assumed that the great bulk of the accidents for which compensation would be payable under the proposed law will incapacitate the workman for short periods—84 per cent. probably for less than fourteen weeks—and that the fatal accidents and those causing permanent disability, total and partial, will be comparatively few. If this assumption is warranted there would appear to be not only no reasonable ground for the apprehension of the Association that the employers will be unduly burdened with payments for compensation continuing during the lives of permanently injured workmen, but it is certain that under the proposed law as to the vast majority of accidents in every case in which there could be recovery at common law or under the Workmen's Compensation for Injuries Act, the workman will be worse off than he is at present, and his loss will be a direct gain to the employer, amounting annually to a very large sum.

My conclusion is that for all these reasons there is no valid ground for the objections of the Association to the scale of compensation which I have proposed.

I have, however, upon further consideration come to the conclusion that as the purpose of the proposed law is to protect the wage earner there is no reason why highly paid managers and superintendents of establishments, to which Part I is applicable, should be entitled to compensation out of the accident fund to an amount greater than the highest paid wage earner would be entitled to receive, and I therefore recommend that the draft bill be amended by adding the following to sub-section 1 of section 39:

"But not so as to exceed in any case the rate of $2,000 per annum."

If no such limit is prescribed the result would be that the small employer, in the case of an accident happening in another establishment to a highly paid official, would be unduly burdened. I propose $2,000 as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner.

The only remaining provision of the draft bill to which I shall refer is section 68, which provides for a contribution by the Province to assist in defraying the expenses incurred in the administration of the act. I have not ventured to sug-

gest what this contribution should be but, in my judgment, it should be a substantial one. The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation, which will lessen very much the cost of the administration of justice.

There is one matter which should be provided for for which provision has not been made in my draft bill. No provision is made for contribution by employers in the industries mentioned in schedule 2 towards defraying the cost of administration. This was an oversight, and I recommend that a section be added to the bill providing that "the employers in industries for the time being embraced in schedule 2 shall pay the Board such proportion of the expenses of the Board in the administration of this part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied upon them in like manner as in the case of assessments for contributions to the accident fund, and all the provisions of this part as to assessments shall apply *mutatis mutandis* to assessments made under the authority of this section."

It is the purpose of my draft bill to empower the Board in determining the proportions of the contributions to be made to the accident fund by employers to have regard to the hazard of each industry, and to fix the proportions of the assessments to be borne by the employer accordingly, and not to require that the proportions for each class or sub-class should be uniform; and also to permit the Board, if in its opinion the character of any class of industry justifies that being done, to require a larger contribution to the reserve fund by the employers in any such class than is required from employers in other classes.

The bill as drafted will, I think, accomplish this purpose, but if any doubt is entertained as to it, the bill can be amended by the addition of a section expressly so declaring.

I may be permitted to say, in conclusion, as the United States Commissioners said with reference to the bill drafted by them, that I submit the proposed law "not believing that it is the most perfect measure which could be devised nor the last word which can be said upon the subject, but as the result of careful investigation and the best thought of the Commission and as constituting at least a step in the direction of a just, reasonable, and practicable solution of the problem with which it deals."

I regret that some of its provisions do not commend themselves to the judgment of the Canadian Manufacturers Association, and on that account I have, since my last interim report, again carefully and anxiously considered those which are objected to and the objections that are urged against them, as well as the provisions of the Association's alternative proposition, but have seen no reason for doubting the correctness of the conclusion to which I had come, the results of which are embodied in the draft bill.

In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is

admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the Legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.

All of which is respectfully submitted.

W. R. MEREDITH,
*Commissioner.*

Dated at Osgoode Hall, Toronto,
the 31st day of October, 1913.

# SECOND INTERIM REPORT ON

# Laws Relating to the Liability of Employers

WITH DRAFT OF

An Act to provide for Compensation to Workmen for Injuries sustained and Industrial Diseases contracted in the course of their employment.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O.,

COMMISSIONER.

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1913.

*To the Honourable*

SIR JOHN MORISON GIBSON, K.C.M.G.,

*Lieutenant-Governor of the Province of Ontario, etc., etc., etc.*

The undersigned has the honour to submit a further interim report on the subject of compensation to workmen for injuries sustained in the course of their employment.

The undersigned has carefully considered the matters into which he was by Your Honour's Commission appointed to inquire, and has embodied his conclusions in a draft Bill which is submitted herewith.

The blanks for the percentage of wages which appear in the draft Bill should in the opinion of the undersigned be filled in with the figures 55.

The undersigned has not yet been able to prepare his final report, but hopes to transmit it with the documentary and other evidence taken and a statement of his reasons for the conclusions at which he has arrived, during the present month.

All of which is respectfully submitted,

W. R. MEREDITH,

*Commissioner.*

OSGOODE HALL,
TORONTO, April 1st, 1913.

# BILL

An Act to provide for Compensation to Workmen for Injuries sustained and Industrial Diseases contracted in the course of their employment.

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HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

**1** This Act may be cited as *The Workmen's Compensation Act.* Short title.

**2.**—(1) In this Act:— Interpretation

(*a*) "Accident" shall include a wilful and an intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause; "Accident."

(*b*) "Accident Fund" shall mean the fund provided for the payment of compensation under this Act; "Accident fund."

(*c*) "Board" shall mean Workmen's Compensation Board; "Board."

(*d*) "Construction" shall include re-construction, repair, alteration and demolition; "Construction."

(*e*) "Dependants" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent; "Dependants."

"Employer." (*f*) "Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about any establishment, undertaking, business or employment, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Employment." (*g*) "Employment" shall include employment in any part, branch or department of an establishment, undertaking or business;

"Industrial disease." (*h*) "Industrial disease" shall mean any of the diseases mentioned in Schedule 3, and any other disease which by the Regulations is declared to be an industrial disease;

"Industry." (*i*) "Industry" shall include establishment, undertaking, trade and business;

"Invalid." (*j*) "Invalid" shall mean physically or mentally incapable of earning;

"Manufacturing." (*k*) "Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity;

"Medical referee." (*l*) "Medical Referee" shall mean medical referee appointed by the Board;

"Member of the family." (*m*) "Member of the Family" shall mean and include wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother and half-sister, and a person standing in *loco parentis* to the workman, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents;

(*n*) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials; "Outworker."

(*o*) "Regulations" shall mean regulations made by the Board under the authority of this Act; "Regulations."

(*p*) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour, clerical work, or otherwise, but shall not include an out-worker. "Workman."

(2) Words in the singular number interpreted by subsection 1 shall have a corresponding meaning when used in the plural. Interpretation of words used in number.

(3) The exercise and performance of the powers and duties of:— Municipal corporations, etc., and school boards.

(*a*) a municipal corporation;

(*b*) a public utilities commission;

(*c*) any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation;

(*d*) the board of trustees of a police village; and

(*e*) a school board,

shall for the purposes of this Act be deemed as the trade or business of the corporation, commission, board of trustees or school board.

## PART I.

### COMPENSATION.

Compensation to workmen.

**3.**—(1) Where in any employment, personal injury by accident arising out of and in the course of the employment is caused to a workman his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury:—

Exceptions.

(*a*) does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed;

(*b*) is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

Presumptions.

(2) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Compensation to date from disability.

(3) Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

Section not to apply to casual employment.

(4) This section shall not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

Employers individually liable.

**4.** Employers in the industries mentioned in Schedule 2 shall be liable individually to pay the compensation.

Employers liable to contribute to the accident fund.

**5.** Employers in industries for the time being embraced in Schedule 1, shall be liable to contribute to the accident fund as hereinafter provided, but shall not be liable individually to pay the compensation.

Accident happening out of Ontario.

**6.**—(1) Where the place or chief place of business of an employer is situate in Ontario and an accident happens while the workman is employed elsewhere than in Ontario which would entitle him or his dependants to compensation under this Part if it had happened in Ontario the workman and his dependants shall be entitled to compensation under this Part if the usual place of employment of the workman is in Ontario and his employment out of Ontario has lasted less than six months.

(2) Except as provided by subsection 1 no compensation shall be payable under this Part where the accident to the workman happens out of Ontario unless it happens on a steamboat, ship or vessel, or on a railway, and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without Ontario.

Where compensation payable by law of foreign country, workman to elect.

**7.**—(1) Where by the law of the country or place in which the accident happens the workman or his dependants are entitled to compensation in respect of it they shall be bound within three months after the happening of the accident or in case it results in death within three months after the death to elect whether they will claim compensation under the law of such country or place or under this Part and to give notice of such election, and if such election is not made and notice given it shall be presumed that they have elected not to claim compensation under this Part.

How election to be made.

(2) Notice of the election, where the compensation under this Part is payable by the employer individually, shall be given to the employer, and where the compensation is payable out of the accident fund to the Board and shall be given in both cases within three months after the happening of the accident.

Dependants not resident in Ontario.

**8.**—(1) Where a dependant is not a resident of Ontario he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependants of a workman to whom an accident happens in such place or country if resident in Ontario would be entitled to compensation and where such dependants would be entitled to compensation under such law the compensation to which the non-resident dependant shall be entitled under this Part shall not be greater than the compensation payable in the like case under that law.

Exception.

(2) Notwithstanding the provisions of subsection 1 the Board may make such allowance in lieu of compensation to any such non-resident dependant as may be deemed proper and may pay the same out of the accident fund.

Where workman entitled to action against person other than employer, action may be brought.

**9**—(1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependants to an action against some person other than his employer the workman or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action.

Workman entitled to difference between compensation under Act and amount collected.

(2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependants.

Subrogation of employer or Board to rights of workman.

(3) If the workman or his dependants elect to claim compensation under this Part the employer, if he is individually liable to pay it, and the Board if the compensation is payable out of the accident fund shall be subrogated to the rights of the workman or his dependants and may maintain an action in his or their names against the person against whom the action lies and any sum recovered from him by the Board shall form part of the accident fund.

How Election to be made.

(4) The election shall be made and notice of it shall be given within the time and in the manner provided by subsection 2 of section 7.

Sub-contractors.

**10.**—(1) Where the compensation is payable by the employer individually and a person, in this section referred to as the principal, in the course of or for the purposes of his trade or business contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work the compensation which he would have been liable to pay if that workman had been immediately employed by him.

(2) Where compensation is claimed from the principal in this Part reference to the principal shall be substituted for reference to the employer, except that the amount of the compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

(3) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section and all questions as to the right to and the amount of any such indemnity shall be determined by the Board.

(4) Nothing in this section shall prevent a workman claiming compensation under this Part from the contractor instead of the principal.

(5) This section shall not apply where the accident happens elsewhere than on or in or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

Member of family of employer employed as workman.

**11.** Where compensation is payable out of the accident fund, a member of the family of an employer shall not be entitled to compensation unless he was at the time of the accident carried on the pay roll of the employer and his wages were included in the then last statement furnished to the Board under section 76 nor for the purpose of determining the compensation shall his earnings be taken to be more than the amount of his wages, as shown by such pay roll and statement.

Employer carried on payroll entitled to compensation.

**12.** Where compensation is payable out of the accident fund an employer who is carried on his pay-roll at a salary or wages which the Board deems reasonable shall if such salary or wages were included in the then last statement furnished to the Board under section 76 be deemed to be a workman within the meaning of this Act and shall be entitled to compensation accordingly, but for the purpose of determining the compensation his earnings shall not be taken to be more than the amount of his salary or wages as shown by such pay roll and statement.

No action to be brought to recover compensation.

**13.** No action shall lie for the recovery of the compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation shall be heard and determined by the Board.

Workman entitled to compensation residing out of Ontario.

**14.** If a workman receiving a weekly or other periodical payment ceases to reside in Ontario he shall not thereafter be entitled to receive any such payment unless a medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature and if a medical referee so certifies the workman shall be entitled quarterly to the amount of the weekly or other periodical payment accruing due if he proves in such manner as may be prescribed by the Regulations his identity and the continuance of the incapacity in respect of which the same is payable.

Compensation to be in lieu of all actions and rights of action against employer.

**15.** The right to compensation provided for by this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a workman or his dependants are or may be entitled against the employer of such workman for or by reason of any accident which happens to him while in the employment of such employer, and after the day of 191 , and no action in respect thereof shall thereafter lie.

Right to compensation may not be waived.

**16.** It shall not be competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependants are or may become entitled under this Part and every agreement to that end shall be absolutely void.

Agreement as to compensation not valid unless approved by the Board.

**17.**—(1) Where the compensation is payable by an employer individually no agreement between a workman or dependant and the employer for fixing the amount of the compensation or by which the workman or dependant accepts or agrees to accept a stipulated sum in lieu or in satisfaction of it shall be binding on the workman or dependant unless it is approved by the Board.

Exception.

(2) Subsection 1 shall not apply to compensation for temporary disability lasting for less than four weeks.

Deduction not to be made from wages.

**18.**—(1) It shall not be lawful for an employer, either directly or indirectly, to deduct from the wages of any of his workmen any part of any sum which the employer is or may become liable to pay to the workman as compensation under this Part or to require or to permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability which he has incurred or may incur under this Part.

Penalty.

(2) Every person who contravenes any of the provisions of subsection 1 shall for every such contravention incur a penalty not exceeding $50 and shall also be liable to repay to the workman any sum which has been so deducted from his wages or which he has been required or permitted to pay in contravention of subsection 1.

Compensation not assignable or liable to attachment.

**19.** Unless with the approval of the Board no sum payable as compensation or by way of commutation of any weekly or other periodical payment in respect of it shall be capable of being assigned, charged or attached, nor shall it pass by operation of law except to a personal representative nor shall any claim be set off against it.

Notice of accident to be given.

**20.**—(1) Subject to subsection 5 compensation shall not be payable unless notice of the accident is given as soon as practicable after the happening of it and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation is made within six months from the happening of the accident or in case of death within six months from the time of death.

Nature of notice.

(2) The notice shall give the name and address of the workman and shall be sufficient if it states in ordinary lan-

guage the cause of the injury and where the accident happened.

(3) The notice may be served by delivering it at or sending it by registered post addressed to the place of business or the residence of the employer, or where the employer is a body of persons, corporate or unincorporate, by delivering it at or sending it by registered post addressed to the employer at the office or if there are more offices than one at any of the offices of such body of persons. Service of notice.

(4) Where the compensation is payable out of the accident fund the notice shall also be given to the Board by delivering it to or at the office of the Secretary or by sending it to him by registered post addressed to his office.

(5) Failure to give the prescribed notice or any defect or inaccuracy in a notice shall not bar the right to compensation if in the opinion of the Board the employer was not prejudiced thereby or where the compensation is payable out of the accident fund if the Board is of opinion that the claim for compensation is a just one and ought to be allowed. Failure to give, or defect in notice not to affect right to compensation in certain cases.

**21.**—(1) A workman who claims compensation, or to whom compensation is payable under this Part shall if so required by his employer submit himself for examination by a duly qualified medical practitioner provided and paid for by the employer and shall if so required by the Board submit himself for examination by a medical referee. Workman to submit to examination.

(2) A workman shall not be required at the request of his employer to submit himself for examination otherwise than in accordance with the Regulations. In accordance with regulations.

**22.**—(1) Where a workman has upon the request of his employer submitted himself for examination, or has been examined by a duly qualified medical practitioner selected by himself, and a copy of the report of the medical practitioner as to the workman's condition has been furnished in the former case by the employer to the workman and in the latter case by the workman to the employer the Board may, on application of either of them, refer the matter to a medical referee. In case of difference between medical examiners, etc., reference may be made to medical referee.

(2) The medical referee to whom a reference is made under the next preceding subsection or who has examined the workman by the direction of the Board under subsection 1 of section 21, shall certify to the Board as to the condition of the workman and his fitness for employment, specifying Certificate of medical referee final.

where necessary the kind of employment and his certificate shall be conclusive as to the matters certified.

Failure to submit to examination or obstructing it.

(3) If a workman does not submit himself for examination when required to do so as provided by subsection 1 of section 21, or on being required to do so does not submit himself for examination to a medical referee under that subsection or under subsection 1 of this section, or in any way obstructs any examination, his right to compensation or if he is in receipt of a weekly or other periodical payment his right to it shall be suspended until such examination has taken place.

Review of compensation.

**23**. Any weekly or other periodical payment to a workman may be reviewed at the request of the employer or of the workman, if the compensation is payable by the employer individually, or, if the compensation is payable out of the accident fund, of the Board's own motion or at the request of the workman and on such review the Board may put an end to or diminish or may increase such payment to a sum not beyond the maximum hereinafter prescribed.

Increase of compensation to workman under 21.

**24**. Where the workman was at the date of the accident under twenty-one years of age and the review takes place more than six months after the accident the amount of a weekly payment may be increased to any sum not exceeding per cent. of the weekly sum which if he had remained uninjured he would probably have been earning at the date of the review.

Commutation of payments for lump sum.

**25**.—(1) Where the compensation is payable by an employer individually, the employer may, with the consent of the workman or dependant to whom it is payable and with the approval of the Board, but not otherwise, and where it is payable out of the accident fund the Board may commute the weekly or other periodical payments payable to a workman or a dependant for a lump sum.

Lump sum to be paid to Board.

(2) Where the lump sum is payable by the employer individually it shall be paid to the Board.

Application of lump sum.

(3) The lump sum may be:—

(*a*) applied in such manner as the workman or dependant may direct;

(*b*) paid to the workman or dependant;

(*c*) invested by the Board and applied to meet the future payments as they become due;

(*d*) paid to trustees to be used and employed upon and subject to such trusts and for the benefit of such persons as, in case it is payable by the employer individually, the workman or dependant directs and the Board approves, or, if payable out of the accident fund, as may be desired by the workman or dependant and approved by the Board;

(*e*) applied partly in one and partly in another or others of the modes mentioned in clauses (*a*), (*b*), (*c*) and (*d*),

as the Board may determine.

Commutation of weekly payments.

**26.**—(1) Where a weekly or other periodical payment is payable by the employer individually and has been continued for not less than six months, the Board may on the application of the employer allow the liability therefor, to be commuted by the payment of a lump sum of such an amount as, if the incapacity is permanent, would purchase an immediate annuity from a life insurance company approved by the Board, equal to seventy-five per cent. of the annual value of the weekly or other periodical payment, and in other cases of such an amount as the Board may deem reasonable.

Application of lump sum

(2) The sum for which a payment may be commuted under subsection 1, shall be paid to the Board and shall be dealt with in the manner provided by section 25.

Insurance company required to commute weekly or other periodical payment.

**27.**—(1) Where an employer insured by a contract of insurance of an insurance company or any other underwriter is individually liable to make a weekly or other periodical payment to a workman or his dependants and the payment has continued for more than six months the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the incapacity of the workman or his death, if the accident resulted in death, be commuted by the payment of a lump sum in accordance with the next preceding section, and the company or underwriter shall pay the lump sum to the Board, and it shall be dealt with in the manner provided by section 25.

(2) This section shall not apply to a contract of insurance entered into before the passing of this Act.

Board may require employer to pay sum sufficient to commute.

**28.** The Board may require an employer who is individually liable to pay the compensation to pay to the Board a sum sufficient to commute in accordance with section 26, any weekly or other periodical payments which are

payable to the workman during his life or to his widow during her widowhood and such sum shall be applied by the Board in the payment of such weekly or other periodical payments as they from time to time become payable, but if the sum paid to the Board is insufficient to meet the whole of such weekly or other periodical payments the employer shall nevertheless be liable to make such of them as fall due after the sum paid to the Board is exhausted.

Board may require employer to insure his workmen.

**29.** The Board may require an employer who is individually liable to pay the compensation to insure his workmen and keep them insured against accidents in respect of which he may become liable to pay compensation in a company approved by the Board for such amount as the Board may direct and in default of his doing so the Board may cause them to be so insured and may recover the expense incurred in so doing from the employer.

Where employer insured Board may require insurer to pay amount payable to employer directly to injured workman.

**30.**—(1) Where an employer who is individually liable to pay the compensation is insured against his liability to pay compensation, the Board may require the insurance company or other underwriter to pay the sum which under the contract of insurance such company or underwriter would be liable to pay to the employer in respect of an accident to a workman who becomes, or whose dependants become entitled to compensation under this Part, directly to the Board in discharge or in discharge *pro tanto* of the compensation to which such workman or his dependants are found to be entitled.

Notice to be given to insurer.

(2) In any case to which subsection 1 applies where a claim for compensation is made notice of the claim shall be given to the insurance company or other underwriter and to the employer and the Board shall determine not only the question of the right of the workman or dependant to compensation but also the question whether the whole or any part of it should be paid directly by the insurance company or other underwriter as provided by subsection 1.

Sect. 25 to apply.

(3) Section 25 shall apply to the compensation payable to the Board under subsection 1.

In case of permanent disability employer may be required to pay capital sum,

**31.**—(1) Where the accident causes permanent disability, either total or partial or the death of the workman and the compensation is payable by the employer individually the Board may require the employer to pay to the Board such sum as in its opinion will be sufficient with the interest thereon if invested so as to earn interest at the rate of 5 per cent. per annum to meet the future payments to be made to the workman or his dependants, and such

sum when paid to the Board shall be invested by it and shall form a fund to meet such future payments.

(2) The Board, instead of requiring the employer to make the payment provided for by subsection 1, may require him to give such security as the Board may deem sufficient for the future payments. or to give security for payment of compensation.

**32.** Where a right to compensation is suspended under the provisions of this Part no compensation shall be payable in respect of the period of suspension. Compensation not payable during suspension.

SCALE OF COMPENSATION.

**33.**—(1) Where death results from an injury the amount of the compensation shall be:— Compensation in case of death.

(*a*) The necessary expenses of the burial of the workman not exceeding $75.

(*b*) Where the widow or an invalid husband is the sole dependant a monthly payment of $20.

(*c*) Where the dependants are a widow or an invalid husband and one or more children, a monthly payment of $20, with an additional monthly payment of $5 for each child under the age of 16 years, not exceeding in the whole $40.

(*d*) Where the dependants are children a monthly payment of $10 to each child under the age of 16 years, not exceeding in the whole, $40.

(*e*) Where the workman was under the age of 21 years, and the dependants are his parents or one of them, a monthly payment of $20, ceasing when the workman would have attained the age of 21 years.

(*f*) Where the sole dependants are persons other than those mentioned in the foregoing clauses a sum reasonable and proportionate to the pecuniary loss to such dependants occasioned by the death, to be determined by the Board, but not exceeding in the whole $40 per month.

(2) Where permanent total disability results from the injury the amount of the compensation shall be a weekly payment during the life of the workman equal to per cent. of his average weekly earnings during the previous Compensation in case of permanent total disability.

twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.

Duration of payments under clause (f) of subsection 1.

(3) In the case provided for by clause (*f*) of subsection 1, the payments shall continue only so long as in the opinion of the Board it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the dependants.

Marriage of widow.

**34.**—(1) If a dependant widow marries the monthly payments to her shall cease, but she shall be entitled in lieu of them to a lump sum equal to the monthly payments for two years and such lump sum shall be payable within one month after the day of her marriage.

Exception.

(2) Subsection 1 shall not apply to payments to a widow in respect of a child.

Where workman leaves no dependant, expense of medical attendance and burial may be ordered to be paid.

**35.** Where a workman leaves no dependants such sum as the Board may deem reasonable for the expenses of his medical attendance and of his burial shall be paid to the persons to whom such expenses are due.

Partial or temporary disability.

**36.** Where the disability is partial or temporary the compensation shall be a weekly payment of a sum proportionate to the impairment of the earning capacity of the workman not exceeding in any case per cent. of his average weekly earnings ascertained in the manner provided by section 39, and the compensation shall be payable while the disability lasts.

Compensation not to exceed percentage of wages in certain cases

**37.** The compensation payable as provided by subsection 1 of section 33, shall not in any case exceed per cent. of the average monthly earnings of the workman calculated in the manner provided by section 39, and if the compensation payable under that subsection would in any case exceed that percentage it shall be reduced accordingly, and where several persons are entitled to monthly payments the payments shall be reduced proportionately.

When payments to child to cease.

**38.** A monthly payment in respect of a child shall cease when the child attains the age of 16 years.

How average earnings to be computed.

**39.**—(1) Average earnings shall be computed in such a manner as is best calculated to give the rate per week or month at which the workman was remunerated.

(2) Where owing to the shortness of the time during which the workman was in the employment of his employer or the casual nature of his employment or the terms of it, it is impracticable to compute the rate of remuneration as of the date of the accident regard may be had to the average weekly or monthly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed then by a person in the same grade employed in the same class of employment and in the same locality. In case of shortness of service or its casual nature.

(3) Where the workman has entered into concurrent contracts of service with two or more employers under which he worked at one time for one of them and at another time for another of them his average earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. Where two or more employers

(4) Employment by the same employer shall mean employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause. Meaning of employment by same employer. concurrently.

(5) Where the employer was accustomed to pay the workman a sum to cover any special expenses entailed on him by the nature of his employment that sum shall not be reckoned as part of his earnings. Special expenses not to be included.

**40.** In fixing the amount of a weekly or monthly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his incapacity, including any pension, gratuity or other allowance provided wholly at the expense of the employer. Matters to be considered in fixing payments.

**41.** The amount of the weekly payment in the case of partial incapacity shall in no case exceed the difference between the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident but shall bear such relation to the amount of that difference as under the circumstances appears just. Payment not to exceed difference between wages earned and what may be earned.

**42.** Where there are both total and partial dependants the compensation may be allotted partly to the total and partly to the partial dependants. Compensation to dependants.

Board may apply payment for benefit of children

**43.** Where the Board is of opinion that for any reason it is necessary or desirable that a payment in respect of a child should not be made directly to its parent, or where a dependant child has no parent or guardian, the Board may direct that the payment be made to such person or be applied in such manner as the Board may deem best for the advantage of the child.

THE WORKMEN'S COMPENSATION BOARD.

Workmen's Compensation Board, how constituted.

**44.** There is hereby constituted a Commission for the administration of this Part to be called "The Workman's Compensation Board," which shall consist of three members to be appointed by the Lieutenant-Governor in Council and shall be a body corporate.

Chairman,

Vice-chairman.

**45.** One of the Commissioners shall be appointed by the Lieutenant-Governor in Council to be the Chairman of the Board and he shall hold that office while he remains a member of the Board and another of the Commissioners shall be appointed by the Lieutenant-Governor in Council Vice-Chairman of the Board.

When vice-chairman may act.

**46.** In the absence of the Chairman or in case of his inability to act or if there is a vacancy in the office, the Vice-chairman may act as and shall have all the powers of the Chairman.

Presumption where vice-chairman has acted.

**47.** Where the Vice-Chairman appears to have acted for or instead of the Chairman it shall be conclusively presumed that he so acted for one of the reasons mentioned in the next preceding subsection.

Tenure of office of commissioners.

**48.** Each Commissioner shall, subject to section 49 hold office during good behaviour for a period of ten years but may be removed at any time for cause.

Age limit.

**49.** Unless otherwise directed by the Lieutenant-Governor in Council a Commissioner shall cease to hold office when he attains the age of 75 years.

Re-appointment.

**50.** A Commissioner if not disqualified by age shall be eligible for re-appointment.

Commissioners to give whole time to duties.

**51.** Each of the Commissioners shall devote the whole of his time to the performance of his duties under this Part.

Salaries.

**52.** The salary of the Chairman shall be $ per annum, and the salary of each of the other Commissioners shall be $ per annum.

**53.** The presence of two Commissioners shall be necessary to constitute a quorum of the Board. Quorum.

**54.** A vacancy in the Board shall not if there remain two members of it impair the authority of such two members to act. Vacancy not to impair authority if two members remain.

**55.** The Board shall have the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production of books, papers, documents and things. Powers of Board.

**56.**—(1) A Commissioner shall not directly or indirectly:— Commissioners to be disqualified in certain cases.

(*a*) have, purchase, take or become interested in any industry, to which this Part applies or any bond, debenture or other security of the person owning or carrying it on;

(*b*) be the holder of shares, bonds, debentures or other securities of any company which carries on the business of employers' liability or accident insurance;

(*c*) have any interest in any device, machine, appliance, patented process or article which may be required or used for the prevention of accidents.

(2) If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a Commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office.

**57.** The offices of the Board shall be situated in the city of Toronto and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Ontario. Offices of Board and Sittings.

**58.** The Commissioners shall sit at such times and conduct their proceedings in such manner as they may deem most convenient for the proper discharge and speedy despatch of business. Proceedings of Board.

**59.**—(1) The Board shall appoint a Secretary and a Chief Medical Officer and may appoint such auditors, actuaries, accountants, inspectors, medical referees, clerks and servants as the Board may deem necessary for carrying out the provisions of this Part and may prescribe their duties Appointment of secretary and officers.

and, subject to the approval of the Lieutenant-Governor in Council, may fix their salaries.

Tenure of office.

(2) Every person so appointed shall hold office during the pleasure of the Board.

Jurisdiction of Board.

**60.**—(1) The Board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise into any court.

Power to reconsider.

(2) Nothing in subsection 1 shall prevent the Board from reconsidering any matter which has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all which the Board shall have authority to do.

Power of Board as to awarding Compensation for Expenses.

**61.** The Board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of or incidental to the contest and an order of the Board for the payment by an employer of any sum so awarded when filed in the manner provided by section 63 shall become a judgment of the Court in which it is filed and may be enforced accordingly.

Board may act on report of officers.

**62.** The Board may act upon the report of any of its officers and any enquiry which it shall be deemed necessary to make may be made by any one of the Commissioners or by an officer of the Board or some other person appointed to make the enquiry, and the Board may act upon his report as to the result of the inquiry.

Enforcement of orders of Board.

**63.** An order of the Board for the payment of compensation by an employer who is individually liable to pay the compensation or any other order of the Board for the payment of money made under the authority of this Part, or a copy of any such order certified by the Secretary to be a true copy may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court.

Regulations.

**64.**—(1) The Board may make such Regulations as may be deemed expedient for carrying out the provisions of this Part and a certified copy of every regulation so made

shall be transmitted forthwith to the Provincial Secretary and any regulation may within one month after it has been received by the Provincial Secretary be disallowed by the Lieutenant-Governor in Council. Power to Lieutenant-Governor to disallow.

(2) After the period for disallowance has expired every regulation which has not been disallowed shall become effective and shall be forthwith published in the *Ontario Gazette*. Publication.

(3) Every person who contravenes any such regulation after it has become effective or any rule of an association formed as provided by section 97, which has been approved and ratified as provided by that section shall for every contravention incur a penalty not exceeding $50. Penalty.

**65.** The accounts of the Board shall be audited by the Provincial Auditor or by an auditor appointed by the Lieutenant-Governor in Council for that purpose and the salary or remuneration of the last mentioned auditor shall be paid by the Board. Audit of accounts.

**66.**—(1) The Board shall on or before the day of in each year make a report to the Lieutenant-Governor of its transactions during the next preceding calendar year and such report shall contain such particulars as the Lieutenant-Governor in Council may prescribe. Report to Lieutenant-Governor.

(2) Every such report shall be forthwith laid before the Assembly if the Assembly is then in session and if it is not then in session within fifteen days after the opening of the next session. Report to be laid before Assembly.

**67.** The Superintendent of Insurance or an officer of his Department named by him for that purpose shall once in each year and oftener if so required by the Lieutenant-Governor in Council examine into the affairs and business of the Board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the Lieutenant-Governor in Council. Superintendent of insurance to examine into affairs and business of Board.

CONTRIBUTION BY THE PROVINCE.

**68.** To assist in defraying the expenses incurred in the administration of this Part there shall be paid to the Board out of the Consolidated Revenue Fund such annual sum not exceeding $ as the Lieutenant-Governor in Council may direct and such sum shall be payable in equal quarterly sums on the first day of each quarter commencing on the day of 19 . Provincial grant towards costs of administration.

ACCIDENT FUND.

How accident fund to be provided.

Compensation payable out of accident fund in certain cases.

**69.**—(1) An accident fund shall be provided by contributions to be made in the manner hereinafter provided, by the employers in the classes or groups of industries, for the time being embraced in Schedule 1, and compensation payable in respect of accidents which happen in any industry, embraced in any of such classes or groups, shall be payable and shall be paid out of the accident fund.

Industries in Schedule 2 not to contribute.

(2) Notwithstanding the generality of the description of the classes mentioned in Schedule 1 none of the industries embraced in Schedule 2 shall form part of or be deemed to be included in any of such classes, unless it is added to Schedule 1 by the Board under the authority conferred by this Part.

Sufficiency of accident fund to be maintained.

**70.** It shall be the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened.

Industries not specifically included in classes.

**71.** If any trade or business connected with the industries of:—

> Lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating, dyeing and cleaning;

or any occupation incidental thereto or immediately connected therewith, not included in Schedule 2, is not embraced in any of the classes mentioned in Schedule 1, the Board shall assign it to an appropriate class or form an additional class or classes embracing the trades or businesses not so embraced, and until that is done such trades and businesses shall together constitute a separate group or class and shall be deemed to be included in Schedule 1.

**72.**—(1) The Board shall have jurisdiction and authority to:— Jurisdiction of Board

(*a*) re-arrange any of the classes for the time being, embraced in Schedule 1, and withdraw from any class any industry embraced in it and transfer it wholly or partly to any other class or form it into a separate class; As to re-arrangement of classes.

(*b*) establish other classes embracing any of the industries which are mentioned in Schedule 2, or are not embraced in any of the classes in Schedule 1; Establishing other classes.

(*c*) add to any of the classes mentioned in Schedule 1, any industry which is not embraced in any of such classes. Adding to classes.

(2) Where in the opinion of the Board the hazard to workmen in any of the industries embraced in a class is less than that in another or others of such industries, or where for any other reason it is deemed proper to do so, the Board may sub-divide the class into sub-classes and if that is done the Board shall fix the percentages or proportions of the contributions to the accident fund which are to be payable by the employers in each sub-class. Apportionment of burden of assessment according to hazard of business, etc.

(3) Separate accounts shall be kept of the amounts collected and expended in respect of every class and sub-class, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible. Separate accounts to be kept for each class and sub-class.

(4) Where a greater number of accidents has happened in any industry than in the opinion of the Board ought to have happened if proper precautions had been taken for the prevention of accidents in it, or where in the opinion of the Board the ways, works, machinery or appliances in any industry are defective, inadequate or insufficient the Board may add to the amount of any contribution to the accident fund for which an employer is liable in respect of such industry such a percentage thereof as the Board may deem just and may assess and levy the same upon such employer, or the Board may exclude such industry from the class in which it is embraced, and if it is so excluded the employer shall be individually liable to pay the compensation to which any of his workmen or their dependants may thereafter become entitled. Varying amounts of assessment in certain cases. Additional percentage.

Collection and application of additional percentage.

(5) Any additional percentage levied and collected under the next preceding subsection shall be added to the accident fund or applied in reduction of the assessment upon the other employers in the class or sub-class to which the employer from whom it is collected belongs as the Board may determine.

Withdrawing classes.

**73.**—(1) The Board may in the exercise of the powers conferred by the next preceding section withdraw or exclude from a class industries in which not more than a stated number of workmen are usually employed and may afterwards add them to the class or classes from which they have been withdrawn, and any industry so withdrawn or excluded shall not thereafter be deemed to be included in Schedule 1 or Schedule 2.

Employers in industries withdrawn under s.s. 1 may elect to become members of class.

(2) Where industries are withdrawn or excluded from a class under the authority of subsection 1, an employer in any of them may, nevertheless, elect to become a member of the class to which, but for the withdrawal or exclusion he would have belonged, and if he so elects he shall be a member of that class and as such liable to contribute to the accident fund, and his industry shall be deemed to be embraced in Schedule 1.

(3) Notice of the election shall be given to the Secretary of the Board and the election shall be deemed to have been made when the notice is received by him.

Powers may be exercised as occasion requires.

**74.** The powers conferred by the next preceding two sections may be exercised from time to time and as often as in the opinion of the Board occasion may require.

When Regulations become effective.

Publication.

**75.** A regulation or order made by the Board under the authority of clause (*a*) or clause (*b*) of subsection 1 of section 72, shall not have any force or effect unless approved by the Lieutenant-Governor in Council, and when so approved it shall be published in the *Ontario Gazette* and shall take effect on the expiration of one month from the first publication of it in the *Ontario Gazette*.

STATEMENTS TO BE FURNISHED BY EMPLOYERS.

Statements to be furnished by employers.

**76.**—(1) Every employer shall on or before the day of next and yearly thereafter, on or before the day of , or on or before such date as shall be prescribed by the Board prepare and transmit to the Board a statement in detail of the names and ages of all his employees and the amount of the wages earned by each

of them during the year then last past verified by the statutory declaration of the employer or the manager of the business, or where the employer is a corporation by an officer of the corporation having a personal knowledge of the matters to which the declaration relates.

Separate statements as to branches, etc.

(2) Where the business of the employer embraces more than one branch of business or class of industry the Board may require separate statements to be made as to each branch or class of industry, and such statements shall be made, verified, and transmitted as provided by subsection 1.

Failure to furnish statements.

(3) If any employer does not make and transmit to the Board the prescribed statement within the prescribed time the Board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the pay roll of the employer and the employer shall be bound thereby, but if it is afterwards ascertained that such amount is less than the actual amount of the pay roll the employer shall be liable to pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his pay roll.

Penalty.

(4) If an employer does not comply with the provisions of subsection 1 or subsection 2, or if any statement made in pursuance of their provisions is not a true and accurate statement of any of the matters required to be set forth in it the employer for every such non-compliance and for every such statement shall incur a penalty not exceeding $500.

Assessment may be made to correspond with pay-rolls.

**77.**—(1) If a statement is found to be inaccurate the assessment shall be made on the true amount of the pay roll as ascertained by such examination and enquiry or if an assessment has been made against the employer on the basis of his pay-roll being as shown by the statement the employer shall pay to the Board the difference between the amount for which he was assessed and the amount for which he would have been assessed if the amount of the pay-roll had been truly stated, and by way of penalty a sum equal to such difference.

Penalty.

Board may relieve from penalty.

(2) The Board if satisfied that the inaccuracy of the statement was not intentional and that the employer honestly desired to furnish an accurate statement, may relieve him from the payment of the penalty provided for by subsection 1 or any part of it.

Examination of accounts and books of employer.

**78.**—(1) The Board and any member of it, and any officer or person authorized by it for that purpose shall have the right to examine the books and accounts of the employer and to make such other enquiry as the Board may deem necessary for the purpose of ascertaining whether any statement furnished to the Board under the provisions of section 76 is an accurate statement of the matters which are required to be stated therein or of ascertaining the amount of the pay-roll of any employer, and for the purpose of any such examination and enquiry the Board and the person so appointed shall have all the powers which may be conferred on a commissioner appointed under *The Public Inquiries Act*.

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Penalty for obstruction.

(2) An employer and every other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection 1, or refuses to permit it to be made shall incur a penalty not exceeding $500.

Board to have right to inspect premises of employer.

**79.**—(1) The Board and any member of it and any officer or person authorized by it for that purpose shall have the right at all reasonable hours to enter into the establishment of any employer who is liable to contribute to the accident fund and the premises connected with it and every part of them for the purpose of ascertaining whether the ways, works, machinery or appliances therein are safe, adequate and sufficient and whether all proper precautions are taken for the prevention of accidents to the workmen employed in or about the establishment or premises and whether the safety appliances or safeguards prescribed by law are used and employed therein, or for any other purpose which the Board may deem necessary for the purpose of determining the proportion in which such employer should contribute to the accident fund.

Penalty for obstruction.

(2) An employer and every other person who obstructs or hinders the making of any inspection made under the authority of subsection 1, or refuses to permit it to be made, shall incur a penalty not exceeding $500.

Information obtained not to be divulged.

**80.**—(1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged except in the performance of his duties or under the authority of the Board any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

Penalty.

(2) Every person who contravenes any of the provisions of subsection 1 shall incur a penalty not exceeding $50.

Recovery and application of penalties.

**81.** The penalties imposed by or under the authority of this Part shall be recoverable under *The Ontario Summary Convictions Act* and when collected shall be paid over to the Board and shall form part of the accident fund.

ASSESSMENTS.

Provisional assessment.

**82.** The Board shall on or before the day of , 19 , make a provisional assessment on the employers in each class of such sum as in the opinion of the Board will be sufficient to meet the claims for compensation which will be payable by that class during the then calendar year, and to provide a reserve fund of such amount as the Board may deem necessary to pay the compensation payable in future years in respect of claims in that class for accidents happening in that year and also to meet the expenses of the Board in the administration of this Part for the year.

How assessment may be based.

**83.** The sums to be so assessed may be either a percentage of the pay-rolls of the employers or a specific sum as the Board may determine.

Subsequent assessments.

**84.** The Board shall in every year thereafter assess and levy upon the employers in each of the classes a sum sufficient to pay the compensation which was paid in the next preceding calendar year in respect of injuries to workmen in industries within the class and to provide a reserve fund of such amount as the Board may deem necessary to pay the compensation payable in subsequent years in respect of claims in that class which arose during such next preceding year and also to pay the expenses of the Board in the administration of this Part for that year and such assessments may be based upon the pay rolls of the employers.

Proportion of assessment payable by employer to be fixed.

**85.**—(1) The Board shall determine and fix the proportion or part of the sum for which a class is so assessed under the provisions of either of the next preceding two sections which is to be paid by the employers within the class or within any sub-class and every employer shall pay to the Board the sum payable by him within 15 days after notice of the assessment and of the amount so payable has been given to him.

Notice of assessment.

How notice may be served.

(2) The notice may be sent by registered post to the employer and shall be deemed to have been given to him on the day on which the notice was posted.

Insufficient assessment to be made up by supplementary assessments.

**86.** If the amount intended to be provided for by the assessment in any year is by reason of the failure of an em-

ployer to pay his proportion of it or from any other cause insufficient for the purpose for which it was made, the Board may make supplementary assessments to make up the deficiency and section 85 shall apply to such assessments.

All classes may be assessed for deficiency in any of them.

**87.** Where the payments made by the employers in any class are insufficient to meet the amount of any assessment upon the employers embraced in it the deficiency shall be made up by supplementary assessments upon the employers in all the classes and the provisions of section 85 shall apply to such assessments.

Where deficiency made good by employer, mode of application of payment.

**88.**—(1) If and so far as any deficiency mentioned in the next preceding two sections is afterwards made good wholly or partly by the defaulting employer the amount which shall have been made good shall be apportioned between the other employers in the proportions in which the deficiency was made up by them by the payment of supplementary assessments upon them and shall be credited to them in making the next assessment.

Employer not assessed liable to pay amount for which he should have been assessed.

(2) If for any reason an employer liable to assessment is not assessed in any year he shall nevertheless be liable to pay to the Board the amount for which he should have been assessed, and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

Amount collected to be taken into account in making subsequent assessment.

(3) Any sum collected from an employer under subsection 2 shall be taken into account by the Board in making an assessment in a subsequent year on the employers in the class or sub-class to which such employer belonged.

Employer liable to pay unpaid sums.

**89.** Notwithstanding that the deficiency arising from a default in the payment of the whole or part of any assessment has been made up by a special assessment a defaulting employer shall continue liable to pay to the Board the amount of every assessment made upon him or so much of it as remains unpaid.

Lieutenant-Governor-in-Council may require supplementary assessments to be made.

**90.** Whenever the Lieutenant-Governor in Council is of opinion that the condition of the accident fund is such that with the reserves it is not sufficient to meet all the payments to be made in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have happened in previous years, he may require the Board to make a supplementary assessment of such sum as in his opinion

is necessary to be added to the fund, and when such a requirement is made the Board shall forthwith make such supplementary assessment and it shall be made in like manner as is hereinbefore provided as to other special assessments and all the provisions of this Part as to special assessments shall apply to it.

Formation of reserves.

**91.** In order to maintain the accident fund as provided by section 70 the Board may from time to time and as often as may be deemed necessary include in any sum to be assessed upon the employers and may collect from them such sums as may be deemed necessary for that purpose and the sums so collected shall form a reserve fund and shall be invested in securities in which a trustee may by law invest trust moneys.

Penalty for non-payment of assessment.

**92.** If an assessment or a special assessment is not paid at the time when it becomes payable, the defaulting employer shall be liable to pay and shall pay as a penalty for his default such a percentage upon the amount unpaid as may be prescribed by the Regulations or may be determined by the Board.

Collection of unpaid assessments

**93.** Where default is made in the payment of any assessment, or special assessment, or any part of it the Board may issue its certificate stating that the assessment was made, the amount remaining unpaid on account of it and the person by whom it was payable and such certificate or a copy of it certified by the Secretary to be a true copy may be filed with the clerk of any county or district court and when so filed shall become an order of that court and may be enforced as a judgment of the court against such person for the amount mentioned in the certificate.

Board may collect assessment through municipal collectors.

**94.**—(1) If an assessment or a special assessment or any part of it remains unpaid for 30 days after it has become payable, the Board, in lieu of or in addition to proceeding as provided by the next preceding section, may issue its certificate stating the name and residence of the defaulting employer, the amount unpaid on the assessment, the establishment in respect of which it is payable, and upon the delivery of the certificate to the clerk of the municipality in which the establishment is situate he shall cause the amount so remaining unpaid as stated in the certificate to be entered upon the collector's roll as if it were taxes due by the defaulting employer in respect of such establishment, and it shall be collected in like manner as taxes are levied and collected and the amount when collected shall be paid over by the collector to the Board.

Collector entitled to percentage.

(2) The collector shall be entitled to add five per cent. thereof to the amount to be collected and to retain such percentage for his services in making the collection.

RETURNS OF ACCIDENTS.

Employers to give notice of accidents.

**95.**—(1) Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages notify the Board by registered post of the:—

(*a*) happening of the accident and nature of it;

(*b*) time of its occurrence;

(*c*) Name and address of the workman;

(*d*) place where the accident happened;

(*e*) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury.

Penalty.

(2) For every contravention of subsection 1 the employer shall incur a penalty not exceeding $50.

INDUSTRIAL DISEASES.

Certain industrial diseases to be deemed accidents.

**96.**—(1) Where a workman suffers from an industrial disease and is thereby disabled from earning full wages at the work at which he was employed or his death is caused by an industrial disease and the disease is due to the nature of any employment in which he was engaged at any time within twelve months previous to the date of his disablement, whether under one or more employments the workman or his dependants shall be entitled to compensation as if the disease were a personal injury by accident and the disablement were the happening of the accident, subject to the modifications hereinafter mentioned, unless at the time of entering into the employment he had wilfully and falsely represented himself in writing as not having previously suffered from the disease.

By whom compensation payable.

(2) Where the compensation is payable by an employer individually it shall be payable by the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due.

Names of former employers to be furnished by claimants.

(3) The workman or his dependants if so required shall furnish the employer mentioned in the next preceding subsection with such information as to the names and addresses of all the other employers by whom he was employed in the employment to the nature of which the disease was due during such twelve months as such workman or his dependants may possess, and if such information is not furnished or is not sufficient to enable that employer to take the proceedings mentioned in subsection 4 that employer upon proving that the disease was not contracted while the workman was in his employment shall not be liable to pay compensation.

Last employer may bring in former employers.

(4) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer he may bring such employer before the Board and if the allegation is proved that other employer shall be the employer by whom the compensation shall be paid.

Where disease result of gradual process, former employers to contribute.

(5) If the disease is of such a nature as to be contracted by a gradual process any other employers who during such twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer by whom the compensation is payable such contributions as the Board may determine to be just.

How compensation to be fixed.

(6) The amount of the compensation shall be fixed with reference to the earnings of the workman under the employer by whom the compensation is payable and the notice provided for by section 20 shall be given to the employer who last employed the workman during such twelve months in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left the employment.

Presumptions as to disease being due to nature of employment.

(7) If the workman at or immediately before the date of the disablement was employed in any process mentioned in the second column of Schedule 3 and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

Right to compensation where disease is result of an injury not to be affected.

(8) Nothing in this section shall affect the right of a workman to compensation in respect of a disease to which this section does not apply if the disease is the result of an injury in respect of which he is entitled to compensation under this Part.

FORMATION OF ASSOCIATIONS.

Associations of employers may be formed.

**97.**—(1) The employers in any of the classes for the time being included in Schedule 1 may form themselves into an association for accident prevention and may make rules for that purpose.

Rules of Associations if approved by Board and Lieutenant Governor in Council to be binding on the members of the class.

(2) If the Board is of opinion that an association so formed sufficiently represents the employers in the industries included in the class, the Board may approve such rules, and when approved by the Board and by the Lieutenant-Governor in Council they shall be binding on all the employers in industries included in the class.

Where Inspector or Expert appointed by an Association his salary may be paid out of the accident fund

(3) Where an association under the authority of its rules appoints an inspector or an expert for the purpose of accident prevention, the Board may pay the whole or any part of the salary or remuneration of such inspector or expert out of the accident fund or out of that part of it which is at the credit of any one or more of the classes as the Board may deem just.

Application of Part 1.

**98.** This Part shall apply only to the industries mentioned in Schedules 1 and 2 and to such industries as may be added to Schedule 1 under the authority of this Part.

## PART II.

Application of Sections 100 to 102.

**99.** Sections 100 to 102 shall until the day of 191 , apply to every industry and to every workman employed in it, and after that day shall apply only to the industries to which Part I. does not apply and to the workmen employed in such industries.

Liability of Employer for defective ways, works, etc., and for negligence of his servants.

**100.** Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of his employer or by reason of the negligence of his employer or of any person in the service of his employer, the workman or if the injury results in death the legal personal representatives of the workman and any person entitled in case of death shall have an action against the employer, and if the action is brought by the workman he shall be entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury, and if the action is brought by the legal personal representatives of the

workman or by or on behalf of persons entitled to damages under *The Fatal Accidents Act* they shall be entitled to recover such damages as they are entitled to under that Act. 1 Geo. V. c. 33.

**101.** A workman shall hereafter be deemed not to have undertaken the risks incidental to his employment or those due to the negligence of his fellow workmen and contributory negligence on the part of a workman shall not hereafter be a bar to recovery by him or by any person entitled to damages under *The Fatal Accidents Act* in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable. Certain common law rules abrogated. 1 Geo. V. c. 33.

**102.** Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action. Contributory negligence to be considered in assessing damages

## PART III.

### REPEAL.

The Workmen's Compensation for Injuries Act, R.S.O. 1897, c. 160, is hereby repealed. Repeal.

## SCHEDULE 1.

INDUSTRIES THE EMPLOYERS IN WHICH ARE LIABLE TO CONTRIBUTE TO THE ACCIDENT FUND.

Class 1.—Lumbering; logging, river-driving, rafting, booming; saw-mills, shingle-mills, lath-mills; manufacture of veneer and of excelsior; manufacture of staves, spokes, or headings.

Class 2.—Pulp and paper mills.

Class 3.—Manufacture of furniture, interior woodwork, organs, pianos, piano actions, canoes, small boats, coffins, wicker and rattan ware; upholstering; manufacture of mattresses, or bed-springs.

Class 4.—Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets.

Class 5.—Mining; reduction of ores and smelting; preparation of metals or minerals.

Class 6.—Quarries; sand, shale, clay or gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, fire-proofing, or paving blocks, manufacture of cement, asphalt or paving material.

Class 7.—Manufacture of glass, glass products, glassware, porcelain or pottery.

Class 8.—Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

Class 9.—Car shops.

Class 10.—Manufacture of small castings or forgings, metal wares, instruments, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, sheet metal products, buttons of metal, ivory, pearl or horn.

Class 11.—Manufacture of agricultural implements, threshing machines, traction engines, waggons, carriages, sleighs, vehicles, automobiles, motor trucks, toy waggons, sleighs or baby carriages.

Class 12.—Manufacture of gold or silverware, platedware, watches, watch-cases, clocks, jewellery, or musical instruments.

Class 13.—Manufacture of chemicals or explosives, corrosive acids or salts, ammonia, calcium carbide, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, gunpowder or ammunition.

Class 14.—Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched or asphalted paper.

Class 15.—Distilleries, breweries; manufacture of spirituous or malt liquors, alcohol, wine, vinegar, mineral water or soda waters.

Class 16.—Manufacture of non-hazardous chemicals drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations; shoe-blacking or polish.

Class 17.—Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators.

Class 18.—Packing houses, abattoirs, manufacture or preparation of meats or meat products or glue.

Class 19.—Tanneries.

Class 20.—Manufacture of leather goods and products, belting, saddlery, harness, trunks, valises, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires or hose.

Class 21.—Manufacture of dairy products, butter, cheese, condensed milk or cream.

Class 22.—Canning or preparation of fruit, vegetables, fish or food stuffs; pickle factories and sugar refineries.

Class 23.—Bakeries; manufacture of biscuits or confectionery, spices or condiments.

Class 24.—Manufacture of tobacco, cigars, cigarettes or tobacco products.

Class 25.—Manufacture of cordage, ropes, fibre, brooms or brushes; work in manilla or hemp.

Class 26.—Flax mills; manufacture of textiles or fabrics, spinning, weaving and knitting manufactories; manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy or felt.

Class 27.—Manufacture of men's or women's clothing, white wear, shirts, collars, corsets, hats, caps, furs or robes.

Class 28.—Power laundries; dyeing, cleaning or bleaching.

Class 29.—Printing, photo-engraving, engraving, lithographing, embossing; manufacture of stationery, paper, cardboard boxes, bags or wall-paper; and book-binding.

Class 30.—Heavy teaming or cartage; safe-moving or moving of boilers, heavy machinery, building stone and the like; warehousing, storage.

Class 31.—Stone-cutting or dressing; marble works; manufacture of artificial stone.

Class 32.—Steel building and bridge construction; installation of elevators, fire-escapes, boilers, engines or heavy machinery.

Class 33.—Brick-laying, mason work, stone-setting, concrete work, plastering; and manufacture of concrete blocks.

Class 34.—Structural carpentry.

Class 35.—Painting, decorating or renovating; sheet metal work and roofing.

Class 36.—Plumbing, sanitary or heating engineering, operation of passenger or freight elevators, theatre stage or moving pictures.

Class 37.—Sewer construction, deep excavation, tunnelling, shaft-sinking and well-digging.

Class 38.—Construction, installation or operation of electric power lines or appliances, and power transmission lines.

Class 39.—Construction of telegraph or telephone lines.

Class 40.—Road-making or repair of roads with machinery.

Class 41.—Construction of railways.

Class 42.—Shipbuilding.

Class 43.—Navigation.

Class 44.—Dredging, subaqueous construction or pile driving.

## SCHEDULE 2.

INDUSTRIES THE EMPLOYERS IN WHICH ARE INDIVIDUALLY LIABLE TO PAY THE COMPENSATION.

1. The trade or business, as defined by subsection 3 of section 2, of a municipal corporation, a public utilities commission, any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees of a police village and a school board.

2. The construction and operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

3. The construction and operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

4. The construction and operation of telephone lines and works for the purposes of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

5. The construction and operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

6. The construction and operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company.

Class 38.—Construction, installation or operation of electric power lines or appliances, and power transmission lines.

Class 39.—Construction of telegraph or telephone lines.

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6. The construction and operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company.

## SCHEDULE 3.

| Description of Disease. | Description of Process. |
|---|---|
| Anthrax. | Handling of wool, hair, bristles, hides, and skins. |
| Lead poisoning or its sequelæ. | Any process involving the use of lead or its preparations or compounds. |
| Mercury poisoning or its sequelæ. | Any process involving the use of mercury or its preparations or compounds. |
| Phosphorus poisoning or its sequelæ. | Any process involving the use of phosphorous or its preparations or compounds. |
| Arsenic poisoning or its sequelæ. | Any process involving the use of arsenic or its preparations or compounds. |
| Ankylostomiasis. | Mining. |